

FILED

JUN 22 1983

ALEXANDER L. STEVAS,
CLERKIN THE
SUPREME COURT OF THE UNITED

October Term, 1982

No.

ELIZABETH M. BEHREND and BROOKSIDE
LIMITED PARTNERSHIP, upon behalf of
themselves and all others similarly
situated,

Petitioners,

vs.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION
and SAMUEL R. PIERCE, Secretary,
Department of Housing and Urban
Development,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

KENNETH W. BEHREND
1320 Grant Building
Pittsburgh, PA 15219
Counsel for

Petitioners

June 22, 1983

QUESTIONS PRESENTED

1. Whether the doctrine of sovereign immunity bars petitioner from seeking money damages and declaratory relief, under Sections 1702 and 1723(a) of the National Housing Act?

2. Whether petitioners possess a constitutional property interest under the Due Process Clause of the Fourteenth Amendment and thus have standing to bring this cause of action?

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IN THE
SUPREME COURT OF THE UNITED STATES

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and SAMUEL R. PIERCE, Secretary,
Department of Housing and Urban
Development,

Respondents.

PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED
STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

The petitioners, Elizabeth M.
Behrend and Brookside Limited Partnership
prays that a writ of certiorari issue to
review the judgment - order of the United
States Court of Appeals for the Third
Circuit entered in this proceeding on
February 28, 1983.

OPINION BELOW

The Judgment - Order of the Third Circuit Court of Appeals appears in the Appendix hereto.

JURISDICTION

The Judgment - Order of the Court of Appeals for the Third Circuit was entered on February 28, 1983. A timely petition for rehearing either by panel or en banc was denied on March 25, 1983, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

STATUTORY PROVISIONS INVOLVED

United States Code, Title 12:

Sec. 1702

The Secretary [of Housing and Urban Development] shall, in carrying out subchapters . . . of this chapter, be

authorized, in his official capacity to sue and be sued in any Court of competent jurisdiction, State or Federal.

Sec. 1723(a)

[GNMA] shall have power . . . in its corporate name, to sue and to be sued, and to complain and to defend, in any Court of competent jurisdiction, State or Federal.

STATEMENT OF THE CASE

This suit, seeking class action certification; seeks money damages and declaratory relief on behalf of Petitioners and the proposed class they seek to represent to halt a continuing practice of the Government National Mortgage Company (hereinafter "GNMA") and the Department of Housing and Urban Development (hereinafter "HUD") of offering for sale at auction certain HUD insured mortgages held by GNMA. The attempt to bring this practice to an end is made because the mortgages are offered for sale by GNMA at approximately a forty (40%) percent discount to only a few selected parties who are permitted by HUD and GNMA to participate as bidders.

Petitioner, Elizabeth M. Behrend, (hereinafter "Behrend") is a general

partner of a limited partnership known as Brookside Limited Partnership (hereinafter "Brookside"). Petitioner Brookside has developed a one hundred twenty (120) unit apartment complex in Beaver County, Pennsylvania, which is financed by a HUD insured mortgage pursuant to Section 221d(4) of the National Housing Act (12 U.S.C. Sec. 221d (4)). GNMA has issued a commitment to purchase the mortgage from the construction lender. Brookside as mortgagor has provided four hundred ninety-four thousand (\$494,000.00) dollars (up-front) equity in the project. When GNMA acquired the mortgage, it paid the construction lender 97.5% of par value. Brookside has paid the construction lender the other 2 1/2% of the mortgage amount (i.e. 2 1/2% of \$2,734,000.00) in cash.

GNMA is a HUD approved mortgagee. Brookside and its general partners

including Petitioner Behrend are HUD approved mortgagors. Insured project loans may, by regulation, be transferred only to a transferee approved by the FHA Commissioner. No regulation, act, statute, or promulgation has been asserted of record suggesting what basis is used by the Commissioner to determine which transferees are approved and which are not approved. The government asserts that a transfer of a project loan by GNMA which is a HUD insured loan to other than an approved mortgagee is not a transfer to a transferee approved by the Commissioner within the meaning of 24 C.F.R. Sec. 207 B 261(d), but nowhere suggests why HUD approved mortgagees should be able to reap a windfall by purchasing at auction mortgages at sixty (60) percent of par, while other parties including Petitioners Behrend and Brookside, who already have

vast sums of money invested in their own projects, plus much time and effort devoted to their projects, should not be permitted to bid at the auctions. Moreover, the record is devoid on any explanation why HUD approved mortgagees are permitted to continue this practice to the exclusion of others purchasing for a non-HUD approved mortgagee a HUD insured mortgage, for which service the HUD approved mortgagee charges the non-HUD approved mortgagee a fee. In fact, Petitioners were offered this choice by a HUD approved mortgagee, that this mortgagee would buy the mortgage on Petitioner's apartment complex for a sizable broker's fee.

GNMA is charged by law with raising funds to have money available to finance new projects. These funds are generated several ways. The government admits that

while one method of funding is the borrowing by GNMA of money from the Treasury, there clearly are other methods utilized. Another method used by GNMA is to offer certain of its mortgages at auction. Paragraph 34 of the Amended Complaint states that at the December 4, 1980 auction GNMA offered two hundred forty-eight (248) mortgages with a total package amount of \$573,002,167.00. Bids amounting to \$403,387,271.00 were received, of which those amounting to \$113,941,626.00 were accepted. The average accepted price at this auction was sixty (60) cents on the dollar. GNMA has conducted other auctions since. The mortgage upon Petitioner's Brookside Apartments real estate has been offered at these. Also, GNMA's own annual report discloses various funds in the control of the President of GNMA:

GNMA ANNUAL REPORT (1977)

Statement of Changes in Financial Position
(In thousands)

Funds Provided:	1977
Income from operations	\$ 282,600
Mortgage liquidations	2,397,200
Appropriations for participation certificate insufficiencies	7,600
Borrowings from the U.S. Treasury	842,800
Net changes in other assets and liabilities	(25,400)
Adjustment applicable to prior year	
TOTAL FUNDS PROVIDED	<u>\$3,504,800</u>

The major issue raised in this appeal, that being whether the doctrine of sovereign immunity bars appellant's action for monetary damages and declaratory relief under 12 U.S.C. Sections 1702 and 1723(a) is in dispute between the various Circuit Courts of Appeal. The Second Circuit has held that sovereign immunity does not bar a claim against the Secretary of HUD under the above referred to sections while the Fifth and Ninth

Circuits have held that sovereign immunity bars such a claim. S.S. Silberblatt Inc. v. East Harlem Pilot Block, 608 F.2d 28 (2d Cir. 1979). Lomas & Nettleton v. Pierce, 636 F. 2d 971 (5th Cir. 1981); Marcus Garvey Square, Inc. v. Winston Burnett Const. 595 F.2d 1126 (9th Cir. 1979). Also, a number of district courts have held for Petitioner's position, e.g.: Johnson v. Secretary of/and U.S. Department of Housing, 544 F. Suupp. 925 (E.D. La. 1981). Capitol Indemnity Corporation v. Freedom House Development, 487 F. Supp. 839 (D. Mass. 1980).

The Third Circuit, in the present matter, never reached the issue of sovereign immunity. Instead, while seemingly at oral argument agreeing with Petitioners' position that sovereign immunity should not bar Petitioners' cause of action, sua sponte, the Court raised

the issue of whether Petitioners have standing to bring this action. The Court's concern centered upon whether Petitioners possess a constitutional property interest. The Court thus decided this case based upon the standing issue. It is to be noted that the Petitioners by not being permitted to purchase the mortgage on their own project have sustained a loss of approximately \$1,100,000.00.

Thus, Petitioners petition will address both the standing issue and the sovereign immunity issue.

REASONS FOR GRANTING THE WRIT

I. THE DOCTRINE OF SOVEREIGN
IMMUNITY DOES NOT BAR PETITIONERS FROM
SEEKING MONEY DAMAGES AND DECLARATORY
RELIEF UNDER SECTIONS 1702 AND 1723(a) OF
THE NATIONAL HOUSING ACT.

The applicable sections of the
United States Code concerning Petitioners'
claim are as follows:

12 U.S.C. Section 1702

"The Secretary [of Housing and Urban
Development] shall, in carrying out the
provisions of this subchapter and
subchapters . . . of this chapter, be
authorized, in his official capacity to
sue and be sued in any Court of competent
jurisdiction, State or Federal."

12 U.S.C. Section 1723(a)

"[GNMA] shall have power . . . in its
corporate name, to sue and to be sued, and
to complain and to defend, in any Court of
competent jurisdiction, State or Federal."

As stated in petitioners' Statement of the Case this issue is in dispute between the various Circuit Courts of Appeal. The Second Circuit has held that sovereign immunity does not bar a claim against the Secretary of HUD under the above referred to sections while the Fifth and Ninth Circuits have held that sovereign immunity bars such a claim. S. S. Silverblatt Inc. v. East Harlem Pilot Block, 608 F.2d 28 (2nd Cir. 1979); Lomos & Nettleton v. Pierce, 636 F.2d 971 (5th Cir. 1981); Marcus Garvey Square, Inc. v. Winston Burnett Const., 595 F.2d 1126 (9th Cir. 1979). Also, a number of district courts have held for petitioners' position. e.g.: Johnson v. Secretary of/and U.S. Department of Housing, 544 F. Supp. 925 (E.D. La. 1981); Capitol Indemnity Corporation v. Freedom House Development, 487 F. Supp.

839 (D. Mass. 1980). Moreover, no one can deny the importance of this issue. Petitioners by not being permitted to purchase the mortgage on their own project have sustained a loss of approximately \$1,100,000.00. Further, other potential petitioners are losing hundreds of millions of dollars at each HUD-GNMA auction.

The leading Supreme Court case on this issue is F.H.A. v. Burr, 309 U.S. 242 (1940), wherein the Court held that the predecessor statute to 12 U.S.C. Section 1702 (and by analogy to 12 U.S.C. Section 1723(a)) is a limited waiver of sovereign immunity in the sense that recovery is restricted to funds in the possession and control of the agency. Specifically, the Court states as follows:

"This policy is in line with the current disfavor of the doctrine of governmental immunity from suit, as evidenced by the

increasing tendency of Congress to waive immunity where federal governmental corporations are concerned. Keifer & Keifer v. Reconstruction Finance Corp., 306 U.S. 381, 59 S. Ct. 516, 83 L. Ed. 784 (1939). Hence, when Congress establishes such an agency, authorizes it to engage in commercial and business transactions with the public, and permits it to "sue and be sued", it cannot be lightly assumed that restrictions on that authority are to be implied. Rather if the general authority to "sue and be sued" is to be limited by implied exceptions, it must be clearly shown that certain types of suits are not consistent with the statutory or constitutional scheme, that an implied restriction of the general authority is necessary to avoid grave interference with the performance of a governmental function, or that for other reasons it was plainly the purpose of Congress to use the "sue and be sued" clause in a narrow sense. In the absence of such showing, it must be presumed that when Congress launched a governmental agency into the commercial world and endowed it with authority to "sue and be sued", that agency is no less amenable to judicial process than a private enterprise under like circumstances would be." F.H.A. v. Burr, 309 U.S. at 245.

As this case is a case of first impression, this Court has never ruled upon this quesiton. However, the Second Circuit, in S. S. Silberblatt Inc. v.

East Harlem Pilot Block, 668 F.2d 28 (2d Cir. 1979), held that:

"For a claim to be against the Secretary, and therefore within the scope of this 'sue and be sued' clause, as opposed to a suit against the United States, any judgment for plaintiff must be out of funds in the control of the Secretary as distinguished from general Treasury funds. Burr, supra, 309 U.S. at 250, 60 S. Ct. 488. This requirement is satisfied if the judgment could be paid out of funds appropriated under the National Housing Act and in the control or subject to the discretion of the Secretary. See 12 U.S. C. Section 1702; Burr, supra, 309 U.S. at 250, 60 S. Ct. 488; United States v. American National Bank, 443 F. Supp. 167, 170-71 (N.D. Ill. 1977). Since the availability of funds to satisfy any judgment for appellant meets these criteria, the present suit must be treated as one against the Secretary and thus satisfying the "sue and be sued" clause, even though it would not be paid out of funds originally and specifically earmarked for the Taino Towers project."

Other district courts have also found for petitioners' position. In Johnson v. Secretary of/and U.S.

Department of Housing, 544 F. Supp. 925,
935 (E.D. La. 1981), the Court stated:

"In Industrial Indem. Inc. v. Landrieu,
supra, the court held that the "sue and
be sued" language of Section 1702
constitutes a qualified waiver of
sovereign immunity in suits against the
Secretary that relate to his duties under
the National Housing Act. 615 F.2d at
646-647. A suit is against the Secretary,
as opposed to a suit against the United
States that could not be brought, if the
judgment sought can be paid out of a
"separate fund in the control and
possession of the Secretary . . . that is
severed from Treasury funds and Treasury
control."

Id.; Southern Soq v. Roland, supra,
644 F.2d at 379; Dugan v. Rank, 372 U.S.
609, 620, 83 S.Ct. 999, 1006, 10 L.Ed.2d
15 (1963); Land v. Dollar, 330 U.S. 731,
738, 67 S.Ct. 1009, 1012, 91 L.Ed. 1209
(1947); FHA v. Burr, 309 U.S. 242, 250,
60 S.Ct. 488, 492-93, 84 L.Ed 724 (1940);
S. S. Silberblatt, Inc. v. East Harlem
Pilot Block, 608 F.2d 28, 36 (2d Cir.
1979). In the instant case, a judgment
against the secretary can be paid out of
money in the Special Risk Insurance Fund,
12 U.S.C. Section 1715z-3 which is a
separate fund in the control and
possession of the Secretary. Trans-Bay
Engineers and Builders Inc. v. Hills,
supra, 179 U.S. App. D.C. 184, 551 F.
2d 370, 376; S.S. Silberblatt v. East
Harlem Pilot Block, supra, 608 F.2d 28,
35 (2nd Cir.). See generally
Industrial Indem. Inc. v. Landrieu,

supra, 615 F.2d at 646-647 (dictum).
Contra, Marcus Garvey Square, Inc. v.
Winston Burnett Construction Co.,
supra, 595 F.2d at 1130-31; DSI Corp.
v. Secretary of HUD, supra, 594 F.2d at
179-80; Armor Elevator Co., Inc. v. Urban
Corp., supra, 493 F.Supp. at 882-83.

Also, petitioner's position is supported by the case of Capitol Indemnity Corporation v. Freedom House Development, 487 F.Supp. 839 (D. Mass. 1980). The Court, in Capitol, in examining the issue now before this Court stated:

In its first argument, HUD suggests that the recent authority of Marcus Garvey Square, Inc. v. Winston Burnett Const., 595 F.2d 1126 (9th Cir. 1979), which upheld sovereign immunity as a bar to a similar action, should control. Marcus Garvey Square, supra, determined that where a claim could not be satisfied from an identifiable source of funds in the control of the Secretary, the Secretary's specific waiver of sovereign immunity in 12 U.S.C. Section 1702 was unavailing, and without a specific waiver, an action in effect against the United States treasury would not lie. HUD acknowledges, however, that Marcus Garvey Square states a minority view, and in any event, applies only to circumstances in which plaintiff

does not identify a discrete source of HUD funds from which a judgment could be satisfied. When a discrete "res" has been identified, actions like this have been successfully brought against the agency and have surmounted sovereign immunity obstacles on the very equitable lien theory which Marcus Garvey Square acknowledged. See e.g., Trans-Bay Engineers and Builders, Inc. v. Hills, 551 F.2d 370 (D.C. Cir. 1976); Spring Construction Co. v. Harris, 562 F.2d 933 (4th Cir. 1977); Bennett Construction Co. v. Allen Gardens, Inc., 433 F. Supp. 825 (W.D. Mo. 1977); F. W. Eversley & Co. v. East N. Y. Non-Profit HDPC, 409 F. Supp. 791 (S.D.N.Y. 1976); Travelers Indemnity Co. v. First National State Bank of N.J., 328 F. Supp. 208 (D.N.J. 1971); American Fidelity Fire Insurance Co. v. Construccionees Werl, Inc., 407 F. Supp. 164 (D.V.I. 1975). The absence of an identifiable res to satisfy respondent's claim in Marcus Garvey Square, *supra*, distinguished that case from the many cases cited above, and in those prior cases claims against the Secretary have been uniformly allowed.

In the instant case, Capitol suggests that there are three possible identifiable sources of funds in the control of the Secretary from which a judgment could be satisfied: undisbursed mortgage proceeds, the Special Risk Insurance Fund created by 12 U.S.C. Section 1715z-3(b), and the proceeds from the June 1979 foreclosure sale. While the availability of the Special Risk Insurance Fund proceeds for this claim would be, in large part, a question of law, *see*, Marcus Garvey Square, *supra*, at 1130, the question of the availability and

control of the other possible sources of funds is primarily a question of fact to be resolved at trial. Because there are significant questions of fact with respect to funds available, and because the unavailability of such funds would be material - indeed, perhaps critical - to HUD's defense, summary judgment at this point is inappropriate. (emphasis supplied).

In the present case as in Capitol, supra, petitioners have identified without the benefit of discovery two funds of GNMA and HUD which are in control of the Secretary of HUD and the President of GNMA. These are: (1) The funds realized from sale at the auctions in dispute in this litigation and (2) the fund derived from excess rents collected by HUD and used for settlement of the class action case Underwood v. Hills, 414 F.Supp. 526 (D.C.D.C.1976). Also, the respondents admit that there are sources of funds other than the Federal Treasury in that the Vice President of the Office of

Mortgage Finance for GNMA has submitted a declaration of record that "(GNMA) funds are obtained primarily by borrowing from the Secretary of Treasury... " Moreover, the Courts in Silberblatt, Johnson and Capitol recognized the existence of various funds in the control of the Secretary of HUD as distinguished from general Treasury funds. Furthermore, GNMA's own annual report demonstrates the existence of various funds in the control of the President of GNMA:

GOVERNMENT
NATIONAL
MORTGAGE
ASSOCIATION

Statement of Changes in Financial
Position
(In thousands)

Funds Provided:	1977
Income from operations	\$ 282,600
Mortgage liquidations	2,397,200
Appropriations for participation certificate insufficiencies	7,600
Borrowings from the U.S. Treasury	842,800
Net changes in other assets and liabilities	(25,000)
Adjustment applicable to prior year	
TOTAL	<u>\$3,504,800</u>

GNMA Annual Report (1977).

The conflicts between the Circuit Courts of Appeal on this issue, the importance of the issue, and the merits of petitioners' position justify the grant of certiorari to review the judgment below.

II. PETITIONERS POSSESS A
CONSTITUTIONAL PROPERTY INTEREST UNDER THE
DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT AND THUS HAVE STANDING TO BRING
THIS CAUSE OF ACTION.

There are four essential elements which must be met before the Due Process Clause of the Fifth Amendment applies. In order, therefore, to be guaranteed the safeguards of the Due Process Clause, one must inquire initially whether those four essential elements are present. First, a person must have a recognized liberty or property interest at stake. Smith v. Organization of Foster Families, 431 U.S. 816, 837 (1977); Mathews v. Eldridge, 424 U.S. 319, 332 (1976). Second, even a temporary deprivation of that liberty or property will satisfy the required element of the Due Process Clause. North Ga.

Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 606 (1975); Fuentes v. Shevin, 407 U.S. 67, 86 (1972). Third, there must be some form of Federal action which deprives an individual of his liberty or property. Fourth, there must be some legitimate governmental or public reason asserted for depriving an individual of his liberty or property.

The Supreme Court, for many years, has recognized a property interest in the right to acquire property. In Buchanon v. Marley, 245 U.S. 60, 74 (1917), the Supreme Court in viewing what constitutes property under the Due Process Clauses of the Fifth and Fourteenth Amendments stated:

"The federal Constitution and laws passed within its authority are by the express terms of that instrument made the supreme law of the land. The Fourteenth Amendment protects life, liberty and property from invasion by the states

without due process of law. Property is more than the mere thing which a person owns. It is elementary that it included the right to acquire, use and dispose of it. The Constitution protects these essential attributes of property." Holden v. Hardy, 169 U.S. 366.

Also, a number of States, such as Pennsylvania have specifically placed the right to acquire property into their Constitution.¹ In the present case, petitioners have been deprived of their

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1. Art. 1, Section 1, of the Pennsylvania Constitution states:

"All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

Pa. Const., Art. 1, Section 1 (Emphasis added)

property right under the Fifth Amendment in that they are being excluded by GNMA-HUD regulations from bidding on the Brookside project of which they are the mortgagor. This exclusive action taken by the respondents does not rationally relate to any legitimate end of government.

See Nowak, Constitutional Law, p. 410 (1978). In fact, by excluding a majority of the bidders at GNMA-HUD auctions, the respondents are violating their own enabling statutes under 12 U.S.C. 1716, a sub-chapter of the National Housing Act which states:

"...The Congress declares that the purposes of this subchapter are to...manage and liquidate federally owned mortgage portfolios in an orderly manner with...minimum loss to the Federal Government..."

By only allowing a small number of people to bid at the auctions, the Government is losing 40% of the purchase price on their

mortgages. Furthermore, GNMA-HUD's overture to petitioners that they may now bid on their mortgage and others, but only by purchasing the properties through a GNMA-HUD approved mortgagee demonstrates that the regulation in question is a totally arbitrary deprivation of property, and thus violates petitioners' substantive due process rights to the extreme injury of petitioners.^{2 3} See Nowak, Constitutional Law, p. 410 (1978).

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2. It is to be noted that petitioners if they would purchase the Brookside project through GNMA-HUD approved mortgagee would have to pay a lucrative broker's fee to the approved mortgagee.
 3. Petitioners by not being allowed to purchase the mortgage on their own project have sustained a loss of approximately one million, one hundred thousand (\$1,100,000.00) dollars.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment - order of the Third Circuit.

Respectfully submitted,

Kenneth W. Behrend
1320 Grant Building
Pittsburgh, PA
15219

Counsel for
Petitioner

June 22, 1983

JUDGMENT ORDER

Elizabeth M. Behrend and Brookside Limited Partnership appeal from the dismissal of their suit against Government National Mortgage Association, contending that regulations of that corporation respecting eligibility for bidding at auctions of mortgages held by it violated due process and equal protection. We have examined the complaint and conclude that it fails to state a claim on which relief could be granted.

It is therefore O R D E R E D and A D J U D G E D that the judgment of the district court is affirmed. Costs are taxed in favor of appellees.

DATED: FEB 28, 1983

SUR PETITION FOR REHEARING

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

DATED: MAR 25, 1983

STATUTORY PROVISIONS

12 U.S.C. Section 1702

"The secretary (of Housing and Urban Development) shall, in carrying out the provisions of this subchapter and subchapters. . . of this chapter, be authorized, in his official capacity to sue and be sued in any Court of competent jurisdiction, State or Federal."

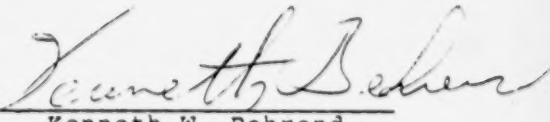
12 U.S.C. Section 1723 (a)

(GNMA) shall have power. . . in its corporate name, to sue and to be sued, and to complain and to defend, any Court of competent jurisdiction, State or Federal.

CERTIFICATE OF SERVICE

I certify that I have this 21st day of June, 1983 served three copies of the within Petition for Writ of Certiorari by first class mail, postage pre-paid upon Susan Engelman, Esquire, and upon Dwight Meier, Esquire, Department of Justice, P.O. Box 875, Benjamin Franklin Station, Washington, D.C. 20044 and that I have this 21st day of June, 1983 also served by first class mail, postage pre-paid, three copies of the foregoing Petition for Writ of Certiorari upon Craig McKay, Esquire, Room 633, U.S. Courthouse, 7th and Grant Streets, Pittsburgh, PA 15230. I have also made service upon the Solicitor General, Department of Justice, Washington, D.C. 20530, by serving three (3) copies of this foregoing Petition for Writ of Certiorari by first class mail,

postage pre-paid. I further certify that
all parties required to be served have
been served.

By 
Kenneth W. Behrend
1320 Grant Building
Pittsburgh, PA 15219

Counsel for
Petitioners

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